LIBRARY
SUPREME COURT. U. S.

Office-Supreme Court, U.S.
FILED
AUG 10 1965
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 461

GABRIEL ARBER ET AL.,
PLAINTIFFS, APPELLANTS,

v.

AMERICAN AIRLINES, INC.,
DEFENDANT, APPELLEE.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

DAVID B. KAPLAN
Attorney for Petitioners
89 State Street
Boston, Massachusetts

Blanchard Press, Inc., Boston, Mass. — Law Printers

TABLE OF CONTENTS

	Page
Petition for Writ of Certiorari	1
I. Opinion Below	2
II. Jurisdiction	2
III. Questions Presented	2
IV. Reasons Relied Upon for the Allowance of the Writ	3
V. Statement of the Case	3
VI. Argument	4
VII. Conclusion	11
Appendix	
A. Judgment of the Court of Appeals	13
B. Judgment of the District Court	14
C. Opinion of the Court of Appeals	15

Table of Citations

Central Railroad Co. v. *Jules S. Sottnek Co.*, 258 F.2d 85 (1958), cert. den. 359 U.S. 913, 79 S.Ct. 588	8
Korte v. *New York, N.H. & H.R. Co.*, 191 F.2d 86, cert. den., 342 U.S. 868, 72 S.Ct. 108 (1951)	7
Moran v. *Pittsburgh-DesMoines Steel Co.*, 183 F.2d 467 (1950)	7
K.L.M. v. *Tuller*, 292 F.2d 775 (1961)	9
Palmer v. *Hoffman*, 318 U.S. 109, 63 S.Ct. 477 (1943)	9, 10
Pekelis v. *Transcontinental & Western Air, Inc.*, 187 F.2d 122, cert. den., 341 U.S. 951, 71 S.Ct. 1020 (1951)	6
United States v. *New York Foreign Trade Zone Operators*, 304 F.2d 792 (1962)	8
United States v. *United Shoe Machinery Corporation*, 89 F. Supp. 349 at page 352 (1950)	5

MISCELLANEOUS

	Page
Federal Business Entry Statute, 28 U.S.C.A. 1732	3
Morgan, Admissions, 12 Wash. L. Rev. 181, 186	5
Morgan, The Law of Evidence, 1941-1945	5
59 Harv. L. Rev. 481, 559 before note 322	5

STATUTES

28 U.S.C.A. 1732	6, 11

In the
Supreme Court of the United States

OCTOBER TERM, 1965

No.

GABRIEL ARBER ET AL.,
PLAINTIFFS, APPELLANTS,

v.

AMERICAN AIRLINES, INC.,
DEFENDANT, APPELLEE.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners, Gabriel Arber, Paul Sriberg, Irving Eisen and Fletcher C. Crandall who, for purposes of this Petition, have consolidated their actions so they may be treated as one, respectfully pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit (hereto appended and marked Appendix A) affirming the judgment of the United States District Court for the District of Massachusetts (hereto appended and marked Appendix B).

I.
Opinion Below

The opinion of the Court of Appeals for the First Circuit is reported in 345 F.2d 130 and this opinion is hereto appended and marked Appendix C (R.A. pp. 79-83).

II.
Jurisdiction

The judgment of the United States Court of Appeals for the First Circuit, here sought to be reviewed was entered on May 19, 1965 (R.A. p. 84).

The jurisdiction of this Court to review by writ of certiorari the judgment complained of is conferred by 28 U.S.C.A. Sections 1254 (1) and 2101 (c).

No motion for rehearing was sought in the Court of Appeals.

III.
Questions Presented

1. Whether, in an action by passengers to recover damages for personal injuries sustained as a result of the negligent operation of an airplane, communications received from the airlines directed to the passengers indicating the cause of the disaster to be different from the position taken by Respondent at the time of the trial, are admissible.
2. Whether, in an action by passengers to recover damages for personal injuries sustained as a result of the negligent operation of an airplane, communications received from the airlines directed to the passengers are admissible under the Federal Business Entry Statute.

IV.
Reasons Relied Upon for the Allowance of the Writ

There is substantial conflict in the Courts of Appeals between the holdings of the First Circuit and the Second Circuit.

The decision of the court below is in conflict with the import of 28 U.S.C.A. 1732 commonly referred to as the Federal Business Entry Statute.

If allowed to stand, the decision below could jeopardize the obligations and relationship of commercial carriers to passengers for hire.

V.
Statement of the Case

This is a case involving the rights and obligations of commercial carriers and passengers for hire. The Petitioners' actions were consolidated and tried together.

On September 14, 1960, the Petitioners were passengers aboard American Airlines, Flight number 362 which left Boston, Massachusetts at 8:00 A.M. for the eventual destination of St. Louis, Missouri. While landing the airplane at LaGuardia Airport, New York City, New York, the wheels of the landing gear struck a fixed barrier causing the aircraft to be thrown on its back and to careen down the runway and burn, as a result of which extensive personal injuries were sustained by the Petitioners.

The Petitioners alleged that the accident was caused by the negligence of the Respondent's agent, servant or employee as well as res ipsa loquitur. The Respondent answered that this plane was caused to come to the ground by reason of unexpected weather and atmospheric conditions . . . (R. 5, 10, 16, 22) and also that res ipsa loquitur did not apply because the movement of the plane was sub-

ject to the control of persons other than the Respondent's servants or agents.

The cases were tried in the United States District Court for the District of Massachusetts, and during the said trial, the Petitioners sought to introduce two communications, one marked Plaintiffs' Exhibit #17, for identification only, which purports to be a communication from C. R. Smith, 100 Park Avenue, New York 17, New York, which was sent to the Petitioners by mail, and which serves to introduce one Captain Thornton Wagner, Test Pilot for American Airlines; and Plaintiff's Exhibit #9, marked for identification only, which is a communication on American Airlines stationery signed by Thornton Wagner, and which alleges to identify the cause of the disaster. The testimony indicated that these communications had been received in the mails by the petitioners. (R.A. pp. 38-39) The Trial Court refused to allow these documents into evidence (R. 167, 168, 169, 170), and proper exceptions were taken at that time.

The petitioners appealed the verdict of the jury to the Court of Appeals for the First Circuit. The Court of Appeals held that the district judge had not committed error and affirmed the judgment of the district court (R.A. p. 84).

The petitioners submit that the court below has erroneously affirmed the judgment of the district court.

Argument

In our adversary system of law, certain rules of evidence must, of necessity, be promulgated in order to expedite the effective administration of justice. The hearsay rule was one such rule of evidence and was designed to provide a party an opportunity to cross-examine a declarant in order to protect his interests and to focus direct attention on the person making the statement in an effort to encour-

age credibility by reducing opportunity for untruths. Because the hearsay rule, in many respects, was cumbersome and burdensome, exceptions to the hearsay rule, both by practice and by statute, developed in order to accomplish a more direct and effective form of justice.

It seems clear that in order to hold a person or artificial being responsible for a declaration, it must be shown that it is his declaration. Whether one seeks to hold an individual responsible for the act of his agent, or whether the corporation is to be held responsible for the act of its employee is based upon the legal doctrine of respondeat superior. Therefore, if the statement is made within the scope of the agent's authority, the principal is bound. Further, as was stated in the case of *United States* v. *United Shoe Machinery Corporation,* 89 F.Supp. 349 at page 352 (1950), ". . . if the principal expressly said, either before or after the agent spoke, that he vouched for the agent's statement or wanted action taken on it, then it is his statement . . ." "Even if the principal does not expressly vouch for the agent's statement, if he acts or conducts his business in such a way as to show by implication that he adopted the statement, then such parts of the statement as he acted upon are 'his'. And to that extent, the statement is receivable against the principal as an adoptive admission." Morgan, *The Law of Evidence,* 1941-1945, 59 Harv. L. Rev. 481, 559 before note 322; Morgan, Admissions, 12 Wash. L. Rev. 181, 186.

Certainly Petitioners' exhibit #17 (R. 47), marked for identification only, is clearly identifiable as written by or on behalf of the defendant, and certainly just as clearly serves to introduce and adopt plaintiff's exhibit #9 (R. 45) which was also marked for identification only. Based upon logic and the foregoing authorities, it is submitted that the documents should have been admitted into evidence with the jury passing on the weight to be given to this evidence.

The exhibits were also admissible on the ground that the defendant pleaded in its answer and also introduced evidence at trial (R. 28, 30, 34, 36), that weather was a factor in the happening of this disaster and the said exhibit clearly negates this position. In fact, the said exhibit is in accord with the Petitioners' theory of liability at trial. The case which is in point and relied upon by the Petitioners is *Pekelis* v. *Transcontinental & Western Air, Inc.*, 187 F.2d 122, cert. den., 341 U.S. 951, 71 Ct. 1020 (1951) where an action was brought for injuries and death arising out of an airplane accident. The defendant investigated the crash and then prepared certain reports. Plaintiff sought to introduce the said reports into evidence and the court said that since the reports were inconsistent with the position taken by the defendant at the trial, the reports were admissible. This is true even though parts of the said reports were based upon hearsay and expressed opinions but the court there indicated that this would go to their credibility rather than to their admissibility. The court further stated in the same case at page 129,

> "In the light of the circumstances, it would have been only fair to require defendant to explain the inconsistencies between these reports and its own position at the trial, despite the lack of an opportunity for testing the declarants by cross examination and oath."

In the case at bar, the jury should have been given the opportunity to observe the subject defendant's communications because they serve to discredit the evidence offered by the defendant during trial.

Another avenue of admissibility of the subject communications open to the Petitioners is 28 U.S.C.A. 1732 commonly referred to as the Federal Business Entry Statute which provides that:

"(a) In any court of the United States and in any court established by Act of Congress, any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of such act, transaction, occurrence, or event, if made in regular course of any business, and if it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event or within a reasonable time thereafter.

"All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but such circumstances shall not affect its admissibility.

"The term "business", as used in this section includes business, profession, occupation, and calling of every kind."

In the case of *Moran* v. *Pittsburgh-DesMoines Steel Co.*, 183 F.2d 467 (1950), the plaintiff sought to introduce a report of the Bureau of Mines of the United States Department of the Interior indicating the results of the investigation made by the five members of the Bureau. The District Court excluded this report and on appeal, the Appellate Court held that the report was admissible even though it contained conclusions of experts which were based upon hearsay evidence, as well as upon observation and that the reports were admissible, although the circumstances would affect the weight to be given to the document.

In *Korte* v. *New York, N.H. & H. R. Co.*, 191 F.2d 86, cert. den., 342 U.S. 868, 72 S.Ct. 108 (1951) wherein the plaintiff sought to introduce a letter written by a physician

who examined the plaintiff on behalf of the defendant. The objection raised by the defense was that the letter was not in the ordinary course of the defendant's business. The Court held, however, that the letter was in the ordinary course of the doctor's business and there is no requirement that it be in the ordinary course of the defendant's business.

In *Central Railroad Co.* v. *Jules S. Sottnek Co.*, 258 F.2d 85 (1958) where the plaintiff called a New York City Fire Marshal as a witness and thereafter sought to introduce his report into evidence, the Court said that since the federal courts generally apply the more liberal evidentiary rule when there is a discrepancy between federal and state rules of evidence in an effort to favor the reception of evidence that this report was admissible. The Court further stated at p. 88, "The salutary purpose underlying the business record statute is . . . to bring the realities of business and professional practice into the courtroom in usable form."

In *United States* v. *New York Foreign Trade Zone Operators*, 304 F.2d 792 (1962) where the plaintiff's employee slipped and was injured and thereafter collected compensation from the plaintiff, and the plaintiff brought this action against the defendant which was the owner and operator of the premises on the grounds of the defendant's negligence in failing to remove snow and ice which was allegedly on the walkway. On the day following the accident, another employee of the plaintiff prepared a report and at the trial of the action, the said report was offered after the person testified. The defendant objected but the court ruled that it was admissible as an exception to the hearsay rule under the Federal Business Records Act. Thereafter, the trial court reversed its position and refused to admit the said report into evidence.. The Appellate Court held that the broad policy of the statute was to bring the rules for admission into evidence of business writings,

records and memoranda more nearly into line with the standards relied upon by businessmen in making business decisions outside of court. The statute was designed to do away with the common law prerequisite to admission of a business record that a party call the entrant as a witness or to call someone else to explain why the entrant was unavailable.

In the case of *Palmer* v. *Hoffman*, 318 U.S. 109, 63 S.Ct. 477 (1943), the Court refused to allow an accident report prepared by the defendant's engineer into evidence on the grounds that the report was not made in "the regular course of business" of the railroad and further stated that the report's "primary utility was in litigating and not railroading". The case is easily distinguishable because the underlying factor in the admissibility of this evidence is to avoid untrustworthy evidence and a report prepared in anticipation of litigation and then offered into evidence by the party preparing said report may not fulfill the requirements.

In the case of *K.L.M.* v. *Tuller*, 292 F.2d 775 (1961) where the subject of admissibility of a statement made by the airline's radio operator some eight or ten hours after the crash was placed in issue on the grounds that the alleged statement should not bind the corporate employer, the court held that because of the public nature of the duties of a common carrier and the relationship of crew members to passengers that an account to public authorities was the same as to the employer and was therefore admissible. The court further stated that since reliability is the basic test for the admission of any hearsay statement, the interest of the one who utters it and the one to be charged is always important. "The official nature of the inquiry which elicited the statement, the independent recording of the statement, the source of the utterance, and the interest of the utterer

all combine to give the statement the earmark of reliability absent in *Palmer* v. *Hoffman.*"

In the case at bar, the fact situation is very much different from the *Palmer* Case, supra, since the report was prepared by the defendant, but offered by the plaintiff and, further, since the report was prepared in the usual course of the business of the commercial airline. There seems to be no question that the success or failure of an airline depends, to a large extent, upon the numbers of people who desire to use that facility for travel and the airlines in their efforts to attract passengers, must endeavor to "sell" safety as their sales campaign and therefore, an investigation of an aircraft disaster and a decision to continue to use the facilities are an integral part of the business of an airline. Therefore, when the defendant took its position . . . "this was an unfortunate accident, just too short and low a landing" (exhibit #9 for identification), the jury should have been given an opportunity to apply this contention against the position taken at time of trial that there was a "thermal sink" or "downdraft" which caused the disaster.

In the decision of the Circuit Court it is stated that it might be inferred from Captain Wagner's position as the defendant's engineering test-pilot that he had apparent authority to speak for the airline with respect to the safety of the planes it flew but questions the authority of the same person to speak for the airline with respect to the manner in which one of its planes was flown on a specific occasion. Certainly, if an individual is authorized to comment on the overall project of safety, then the lesser area of comment as to the manner in which a plane was flown on a particular occasion would logically and necessarily follow within the said authority.

The court further stated in its decision that Petitioner's exhibit #17 "appears to be an inexpensive mimeographed

copy of a communication addressed generally to all passengers on the ill-fated flight in order to restore their confidence in the Electra airplane," which it is submitted, lends absolutely nothing to the issue of admissibility. An engraved piece of parchment as opposed to a mimeographed page cannot be decisive or influential as to admissibility into evidence. It is fundamental that it is the content of the communication rather than the appearance of the communication which opens the doors to admission into evidence, in the trial of a case.

The Circuit Court in its decision indicated that the exhibits were not a press release used for promotional purposes but thereafter refers to the communication as an effort to restore the passengers confidence in the aircraft used by the defendant airline. This concept, when viewed through the iron-rimmed spectacles of todays competition for the air travel market, and recognizing that the motivating factors are simply profit incentives, instead of providing an excuse for the carrier should, it is submitted, make them accountable for their position.

Conclusion

Analysis of the case law as well as of the statute itself, clearly reveals that our jurisprudence dictates that in a trial by jury, every effort should be made to present evidence which will serve to shed light upon the subject matter and to aid the jury in reaching just conclusions. In confirmation of this concept, 28 U.S.C.A. 1732 points up the thinking of the legislature and provides as a safeguard in the statute itself, that "all other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, *but such circumstances shall not affect its admissibility.*" It is respectfully submitted that this statute,

notwithstanding all other arguments, requires that the exhibits in question in this case should have been admitted into evidence and to exclude them was prejudicial error.

WHEREFORE, the petitioners relying upon the arguments and authorities cited, respectfully submit that the ruling of the Court below is contrary to the standards of law as laid down by clear pronouncements in the decisions of this Honorable Court and respectfully urge that certiorari be granted.

Respectfully submitted,

DAVID B. KAPLAN
Attorney for Petitioners

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 6381.

GABRIEL ARBER ET AL.,
PLAINTIFFS, APPELLANTS,
v.
AMERICAN AIRLINES, INC.,
DEFENDANT, APPELLEE.

JUDGMENT
May 19, 1965

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgments of the District Court are affirmed.

By the Court:
(s) ROGER A. STINCHFIELD
Clerk.

Appendix B

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

Civil Action No.

GABRIEL ARBER

v.

AMERICAN AIRLINES, INC.

JUDGMENT

This action came on for trial before the Court and a jury, Honorable Andrew A. Caffrey, District Judge presiding, and the issues having been duly tried and the jury having duly rendered its verdict.

It is Ordered and Adjudged

that the plaintiff take nothing, that the action be dismissed on the merits, and that the defendant American Airlines, Inc. recover of the plaintiff Fletcher C. Crandall its costs of action.

Dated at Boston, Massachusetts this 14th day of May, 1964.

PAUL V. TRAVERSE, *Clerk of Court*
(s) WILLIAM J. LYONS, *Deputy Clerk*

Appendix C

United States Court of Appeals
For the First Circuit

No. 6381.

GABRIEL ARBER ET AL.,
PLAINTIFFS, APPELLANTS,
v.
AMERICAN AIRLINES, INC.,
DEFENDANT, APPELLEE.

CONSOLIDATED APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS.

Before WOODBURY, *Chief Judge,* and HARTIGAN and ALDRICH, *Circuit Judges.*

David B. Kaplan for appellants.
Robert Fulton, with whom *David H. Fulton* was on brief, for appellee.

OPINION OF THE COURT.

May 19, 1965.

WOODBURY, *Senior Circuit Judge* (by designation). These appeals from four judgments entered in consolidated cases on jury verdicts for the defendant present only the question of the propriety of the exclusion of documentary evidence.

The plaintiffs were paying passengers on an American Airlines Electra flight which left Boston at 8:00 A.M. on September 14, 1960, for La Guardia airport, New York, and points beyond. On coming in to land on the assigned runway at La Guardia the landing gear of the plane struck the top of a dike at the end of the runway, and the plane crashed. The appellants claimed personal injuries and

brought actions against American Airlines alleging careless and negligent operation of the airplane. The defense was that as the plane made a normal, safe approach to the runway it unexpectedly and without warning encountered a "thermal sink" or "down draft" which caused it suddenly to lose altitude and hit the dike.

To counter this defense, which so far as the record shows rested entirely on the testimony of the captain flying the plane, the plaintiffs without objection were allowed to introduce an accident report emanating from the defendant airline which contained the statement that "weather was not considered a factor in this accident." Later for the same purpose the plaintiffs offered a mimeographed document in the form of a letter received by the plaintiff Arber on the letterhead of American Airlines. This letter is addressed only "Dear Sir," is dated October 17, 1960, and is signed, apparently with a rubber stamp, by one "Thornton Wagner, Captain," who identified himself in the body of the letter as "Engineering Test Pilot" for American Airlines. Its purport is to restore public confidence in the Electra airplane two of which had previously been involved in accidents attributed to structural failure. The letter stresses the safety of the plane flown at reduced speed and the fact that American Airlines flies it only at reduced speed and attributes this accident and one in which a similar plane crashed after flying into a flock of sea gulls as not having been caused by any structural defect in the plane. With respect to this particular accident the letter states: "The consensus is that this was an unfortunate accident, just too short and low a landing."

The court allowed the letter to be marked for identification but on the defendant's objection refused to admit it in evidence as an exhibit on two grounds: lack of any showing that Captain Wagner had any authority to make admissions binding on the airline and failure of the letter

to say "whose consensus it is." We think this ruling correct on the first ground and so do not need to consider the second.

Assuming for the moment that the letter constituted an admission against the defendant's interest, which is the purpose for which it was offered, its admissibility depends upon whether Captain Wagner had authority under the principles of the law of agency to make the admission on behalf of his corporate employer. See *United States* v. *United Shoe Machinery Corp.*, 89 F.Supp. 349, 353 (D.C. Mass. 1950). There is no direct evidence or offer of evidence that Captain Wagner was clothed with specific authority in this respect. However, it might be inferred from Captain Wagner's position as the defendant's engineering test pilot that he had apparent authority to speak for the airline with respect to the safety of the planes it flew. But the inference is not nearly so clear that he also had apparent authority to speak for the airline with respect to the manner in which one of its planes was flown on a specific occasion. We think it well within the discretionary power of the court below to require the plaintiffs to come forward with more specific evidence of Captain Wagner's authority to speak for the defendant on this subject before admitting the letter in evidence. See Restatement (Second) Agency § 286 (1957).

Subsequently, apparently in an effort to make the Wagner letter binding on the defendant by showing its endorsement by higher corporate authority, the plaintiffs, again through the plaintiff Arber, undertook to introduce another mimeographed document in the form of a letter of the same date. This letter is on the letterhead of C. R. Smith, 100 Park Avenue, New York, 17 New York, is similarly addressed only "Dear Sir:" and is similarly signed apparently with a rubber stamp. It gives no indication of C. R. Smith's connection with American Airlines.

The letter refers to previous publicity about the Electra airplane, some "excellent" and some "unfavorable", and continues: "You will be asked questions about the Electra; we want you to be informed about it." The letter then goes on: "No one knows more about the capability of the Electra than the parties who fly it. Accordingly, I have asked Captain Thornton Wagner, Test Pilot for American, to write you a note about the Electra, and that note is attached." The letter concludes with a statement "about American's operating philosophy" with respect to the safety of the planes it operates.

The court below allowed this letter to be marked for identification but after conference at the bench at which counsel for one of the plaintiffs said: "Smith is president of the company" refused to admit it in evidence as an exhibit on the same grounds assigned for refusing to admit the letter from Captain Wagner. The court announced: "The burden is on the plaintiff to show evidence is admissible, if it is offered by way of admission."

The C. R. Smith letter is not an intra-company accident report such as the one introduced by the plaintiffs in this case without objection. Nor is it a letter written by an airline captain to his superior by way of a report of an accident such as Captain Sigman's letter ruled admissible in *Pekelis* v. *Transcontinental & Western Air, Inc.*, 187 F.2d 122, 125 (C.A. 2, 1951), *cert. denied*, 341 U.S. 951 (1951). There is nothing to show that it was a record made in the regular course of business and thus admissible under Title 28 U.S.C. § 1732(a). Nor is it a press release to the public generally for promotional purposes. On the other hand, neither is it a personally signed letter addressed to a specific recipient.

We think the court below did not err in its ruling excluding the Smith letter from evidence.

There is no extrinsic evidence to indicate the source of the letter as a higher corporate official who might be assumed to have apparent authority to speak for his corporation. There is not even intrinsic evidence in the letter itself to indicate that the purported writer was president of the defendant airline. It is not written on airline stationery, like Captain Wagner's letter, but so far as appears on a personal letterhead, nor does the writer identify himself in the body of the letter as an airline official in any capacity. It appears to be an inexpensive mimeographed copy of a communication addressed generally to all passengers on the ill-fated flight in order to restore their confidence in the Electra airplane. In view of the content and form of the letter and the lack of evidence identifying C. R. Smith with American Airlines or any showing that the letter actually came from him, we think the court below did not abuse its discretion in refusing to admit the letter in evidence on nothing but counsel's statement that "Smith is president of the company."

Moreover, the letter does not authorize Captain Wagner to commit the airline as to the manner in which its airplanes are flown on specific occasions. It only authorized Captain Wagner "to write you a note about the Electra" because "we want you to be informed about it." Thus, even if the C. R. Smith letter actually emanated from the president of the defendant airline, it would add nothing to the authority of Captain Wagner to admit the airline's liability for this particular accident.

On the facts of this case we conclude that the court below did not abuse its discretion in refusing to allow the jury to consider Captain Wagner's letter without more showing of his authority.

Judgment will be entered affirming the judgments of the District Court.